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**Babcock and Wilcox Ltd., the ‘Babcock Family’ and Regulation 17/62: A Business  
Response to New Competition Policy in the Early 1960s**

**Abstract**

This paper explores through the lens of the British company, Babcock and Wilcox Ltd., the response of a group of European companies to the threat posed to their activities by the new EEC competition policy in the early 1960s. Regulation 17/62 was set to ban the market-sharing agreements which had been in place for many years between the companies in Europe. The paper tracks their deliberations over the most suitable response which would allow market sharing to continue while minimising the risk of discovery. This rare insight into the inner discussions of cartel arrangements also highlights the role of legal advice in the solution adopted.

**Keywords**

European integration; Competition policy; Cartels

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It has become common to refer to the European Union's competition policy as 'the first supranational policy' of European integration.<sup>1</sup> When the Treaty of Rome was signed in March 1957 it was not only the first supranational competition policy in the world but for many of the member states their first taste of any form of substantive competition policy.<sup>2</sup> Given the prevalence of international cartels in inter-war Europe and the desire of business to re-establish them after 1945, Article 85, which banned cartels that impacted on cross-border trade in the Six, represented, Pace and Seidel suggest, 'a cultural sea change in Western Europe: from a cartelization era, Europe moved towards a competition-based culture'.<sup>3</sup> Unsurprisingly, such a potentially radical shift in the European business environment sparked great interest in the European business community since the legislation would apply to any company which operated in more than one member state of the European Economic Community (EEC). Significantly, this concern spread beyond the member states of the EEC to other parts of Europe and across the Atlantic to the USA. Interest reached a peak around 1962 when the Commission published Regulation 17/62, which elaborated how the policy principles of the Treaty of Rome were to be implemented in practice.<sup>4</sup> This is often seen as the real starting point of the EEC's competition policy.<sup>5</sup>

At its core the regulation centralized power in the Commission and established deadlines by which companies had to notify the Commission of any multilateral or bilateral agreements which might affect the creation of a common market among the member states. The Commission would then declare whether each agreement was acceptable and could continue to operate, or, was void. Any companies found to have agreements which continued to operate unregistered, and which were regarded as illegal, would be fined. Companies were faced, therefore, with a number of dilemmas. First, a company had to decide if its existing agreements contravened the legislation. Next, if they did appear illegal, the company had to decide on the appropriate response: it could abandon all its agreements; it could modify the

existing agreements such that they did not require notification, or notify these amended agreements to get their approval; it could notify its existing agreements and make a case to justify their continuation; or, finally, it could maintain its existing (now illegal) agreements secretly in the hope that they would not be discovered.

This was not, however, a straightforward decision where companies could make a clear cost-benefit analysis of the potential benefits weighed against the potential costs of the various options available. There were just too many uncertainties and unknowns about how the policy would be implemented after 1962. An extensive legal literature emerged at the time which provided a full spectrum of interpretations of the meaning of the provisions of the Treaty in this field.<sup>6</sup> Regulation 17 resolved some of these issues, as did pronouncements from the Commission, but by the deadline for notification much remained opaque, and radically diverse interpretations of the legal position remained plausible. This was not surprising. As Warlouzet and Witschke note:

Defining a doctrine of competition policy was a difficult endeavour even within a single European country in 1962, as this type of public policy was still very new. Doing so within the whole Common Market was a near-impossible task as the economic structure, the statistical data and the relationships between companies varied significantly from country to country and from sector to sector.<sup>7</sup>

This conclusion is based on a thorough exploration of the drafting of Regulation 17/62 by historians.<sup>8</sup> However, the role of business actors in this process has received limited attention.<sup>9</sup>

Even less is known about how business responded to this change: there have been no studies of company responses to the Regulation despite its significance in the history of EEC competition policy. Faced with how to deal with this novel and uncertain future represented a major challenge for business in Europe. As a partner of McKinsey, the management consultants, noted at the time, ‘It is probable that the influence of antitrust law enforcement and trade regulation influence the competitive strategy of every company which has a dominant role in its industry’.<sup>10</sup> That there was significant under-notification of agreements has become accepted but the extent of this remains guesswork, with estimates ranging from 50 per cent notification to just 5 per cent.<sup>11</sup>

This article explores the issues raised by this novel and uncertain world for firms in Europe through the lens of one company and its links with associated companies across Europe (and large parts of the rest of the world). The company concerned is Babcock and Wilcox Ltd (B&W Ltd), a manufacturer of water tube steam boilers, which had a variety of uses including, in the post-Second World War era, in the new atomic energy industry. This case study, based on the company’s archives and, in particular, one file which dealt with the company’s response to Regulation 17, can be seen as a type of cartel biography, as discussed in the introduction to this special issue.<sup>12</sup> It allows a rare insider view of the response of a group of companies associated with B&W Ltd. which operated a market-sharing scheme across Europe and, hence, whose actions would become illegal once Article 85 was implemented. This is not a full biography covering the duration of the cartel-like behaviour but rather a snapshot of a key episode. As Levenstein and Suslow have pointed out, changes in enforcement regulation, such as the introduction of EEC competition policy, provide an opportunity to obtain some understanding of cartel dynamics.<sup>13</sup> The case illustrates, first of all, the problem of uncertainty in determining the company’s strategic response, the way in which the strategy that emerged reflected an appreciation of the risks involved, and how, as a

result, agreements were amended. Nevertheless, the underlying goal of continued market-sharing dominated the path followed by B&W Ltd and its associates and licensees within the EEC. The article begins with a brief account of Babcock and Wilcox's operations across Europe and their development prior to 1962. It then sets out the challenge faced by the new EEC competition policy, followed by how the company responded.

### **Babcock and Wilcox Ltd.**

The original American parent company was set up in 1867 as a partnership to produce a newly patented steam boiler which was both more efficient and safer than existing boilers for steam engines.<sup>14</sup> It turned itself into Babcock and Wilcox Co. (B&W Co.) in 1881, having developed links with the Singer Manufacturing Company, and followed Singer to Glasgow a few months later as its first international venture. In 1891 the American parent sold its majority share in the UK subsidiary, Babcock and Wilcox Ltd., to public shareholders with the now independent UK company acquiring global rights to sell the US parent's licences outside of the USA and Cuba.<sup>15</sup> By the outbreak of the First World War there were affiliates in Germany and France, manufacturing plants in Japan, Italy and Poland, and agents elsewhere, including other European countries, Australia, Canada, and Russia.

Boyce has shown how after the First World War B&W Ltd. was unable to control its German subsidiary, Deutsche Babcock & Wilcox Dampfkessel Werke Aktion-Gesellschaft (DB&W), in contrast to its better relations with its French subsidiary, Soci  t   Francaise des Constructions Babcock & Wilcox.<sup>16</sup> What is relevant here is that from the outset European markets were divided up. In 1920 a new agreement was signed between B&W Ltd and DB&W which divided up European markets between themselves, and where any sales in the other's markets would lead to the payment of compensation. They also agreed to share technical information, though Boyce suggests that DB&W deliberately contravened the

agreement regularly over the rest of the inter-war period. A 1935 agreement with the French associate company continued into the post-war period.<sup>17</sup>

After the Second World War, the various Babcock entities came together for a conference to consider the companies' post-war strategy.<sup>18</sup> Following this, the US B&W Co. and UK B&W Ltd (plus the European associates) signed a new agreement and deed of covenant. However, by the mid-1950s the US company wanted the latter ended, suggesting that it might fall foul of US anti-trust law.<sup>19</sup> A 10-year agreement was finally agreed in 1958 to exchange patents and know-how on atomic energy, with B&W Co. to be paid \$500,000 per year, and, secondly, to maintain market divisions, although there were concerns that the US company's sales department were not abiding by the agreement in Western Europe. By 1959 B&W Co. was trying to compete directly with B&W Ltd. in Europe and willing to pay the 5% commission for selling in another Babcock company's territory.<sup>20</sup> This did not break the agreement but was viewed by the European companies as contrary to verbal assurances made at the time.<sup>21</sup>

Within Europe there were bilateral 25-year agreements in place between B&W Ltd and its French (from 1935), Spanish (from 1946) and German associates. The last, and most important, was signed in December 1954 and granted DB&W market rights in Austria, Czechoslovakia, Yugoslavia, Hungary, Bulgaria, Romania, and East and West Germany. The agreement also provided for exchange of patents and technical information and equal commission was to be paid for sales in each other's territories (5% service and 1.5-5% sales).<sup>22</sup> The exchange of patents and technical information was viewed as an important element of this inter-firm cooperation. A series of Babcock international research conferences brought company engineers together annually from the early 1950s to exchange such information and this was believed to have had a significant impact.<sup>23</sup> Indeed, in 1957 this collaboration among European Babcock companies was strengthened with the creation of the

Inter-Company Research and Development Council. Below this was a Research and Development Working Party and a series of Specialist Groups covering key product areas, aiming 'to ensure that the combined facilities of the four companies – British, French, German and Spanish – would be deployed as mutually profitably, yet as economically, as possible by avoiding unnecessary duplication of effort, sharing of test facilities, exchanging personnel on selected projects and interchanging information on all subjects of common interest'.<sup>24</sup> Works managers and service engineers also met to discuss the operation of plants and other production issues.

There was a wider sense of unity between B&W Ltd. and the other European Babcock enterprises as well. Annual conferences for managing directors were held from 1950, often with their wives also attending, at which common action against the perceived misdemeanours of B&W Co. was regularly discussed.<sup>25</sup> Likewise, the European companies would refer to themselves as the 'Babcock family'.<sup>26</sup> Relations between B&W Ltd. and the French associate company were particularly good, with Jean Louis, the chairman of the French associated company, being a director of B&W Ltd.

With such links between the European companies it was inevitable that European integration would provide both an opportunity and a challenge for these companies. As Hector McNeil, Managing Director of B&W Ltd., told the 1960 conference of managing directors:

The topic of Common Market has important repercussions. It may change the face of Babcock. It is necessary to make the right moves so that we are ahead of competitors.... The Babcock boiler organization must work together in the Common Market. The first move would be to put up a Trading Company 'Babcock Europe' shared by the six members of the Common Market and the British Company.<sup>27</sup>



In the end the companies decided against such a trading company, instead creating Babcock and Wilcox Technische Maatschappij N.V. in the Netherlands as a ‘small European Company... to promote even closer co-operation’. It was ‘to act as a focal point for co-ordination between the European Companies in such matters as patent ownership and licensing, coordination of research and development and investigation of potential new products as a means of diversifying manufacture’, that is, it would hold patents for all the companies to access.<sup>28</sup> Nevertheless, it was recognized that this new company could be developed and broadened in the light of how European integration developed, with the clear possibility that this might become the basis for a new European company if that proposal came to fruition.

More generally, there was regular discussion of the impact of tariff reductions on Babcock products within the EEC and the possibilities of rationalization of production across the EEC, awareness of the possibility of the proposed new legal entity of a European company and more general discussion of EEC developments.<sup>29</sup> The last of these was always led by Jean Louis at the Managing Directors’ meetings. Louis was extremely well placed to be able to inform the European Babcock companies of these developments as he was also a Vice-President of the Conseil National du Patronat Francais (CNPF), the French peak-level employers’ association. In that role he chaired its committee on European affairs from 1956 until his death in 1973.<sup>30</sup> He was also on the Board of the Bank of France and described by an official in the UK Paris Embassy as ‘an industrialist of some importance’.<sup>31</sup> Through Louis and other mechanisms (see below) B&W Ltd. was extremely well informed about the EEC and its development. This was particularly true of competition policy because of its potential implications for the way the company worked with its European associates. In this respect, it had a clear advantage over most British companies who were reliant only on information

from the government and the Federation of British Industries (FBI). B&W Ltd. exploited these avenues but also in Jean Louis, as a director, had someone operating at the heart of discussions about European integration, putting the company in a position which few companies in Europe could match.

### **From the Treaty of Rome to Regulation 17/62**

Before turning to the companies' response to this challenge it is necessary to outline briefly the nature of EEC competition policy. The Spaak Report, released in April 1956, formed the basis for the Treaty of Rome. Seven pages were devoted to competition policy but by the time the Treaty of Rome was signed nearly a year later this had been reduced to less than four pages. It covered cartels, abuse of dominant position (in thirteen lines of text) and state aids as well as setting out the next stages in the process of developing competition policy. As is well known, Article 85(1) of the Treaty of Rome stated clearly the position of restrictive practices, prohibiting:

All agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market....

These rules of competition went beyond that of any of the six member states' competition policy, with the exception of what was to become the new German law later in 1957.

Moreover, officials of the Commission repeatedly made clear that an effective and vigorous competition policy was fundamental to the success of the Common Market.<sup>32</sup>

However, interpreting the meaning of this policy precisely and clearly was not straightforward, particularly given its radical nature.<sup>33</sup> This was ‘an entirely novel legal field’ because ‘an international antitrust law in the real sense of the word, has been established for the first time’.<sup>34</sup> A further problem was that there was no way that the articles in the treaty could be regarded as a fully worked out legal structure.<sup>35</sup> Partly as a result of the Treaty’s brevity, the wording was obscure and vague. Multiple contradictory interpretations emerged from the business community and from legal experts.<sup>36</sup> Differences existed over such key issues as to what constituted an ‘enterprise’ and a ‘concerted practice’.<sup>37</sup> It was also unclear whether prohibition of an agreement voided the whole agreement or just the particular section.<sup>38</sup> A considerable literature emerged debating the meaning of the key phrase ‘likely to affect trade between Member States’.<sup>39</sup> This issue was not helped by the problem of translation of key terms: authorised versions of the treaty existed in French, German, Dutch and Italian.<sup>40</sup>

In addition, contemporaries were aware that the wording in the articles was a compromise and historical research has shown how different the competing visions of EEC competition policy were at that time.<sup>41</sup> The most obvious example of this compromise was paragraph 3 of Article 85, which set out the exemptions from paragraph 1. It was the balance between the principles of Article 85(1) and the exemptions allowed from those principles under Article 85(3) which would determine the nature of the policy and how it would impact upon business, and this was simply unknown.<sup>42</sup> Directly contradictory interpretations resulted.<sup>43</sup> There was no clear legal position that flowed from the articles. Loftus E. Becker, an American lawyer who had been legal adviser to the Department of State 1957-59, summed up the position well: ‘it is too early to predict what the law will be in this field’.<sup>44</sup> With so many issues unclear, the regulation to come, which was to set out how the rules would be applied, was going to be crucial. Only with its publication would business get a greater sense

of clarity about what EEC competition policy really meant. Regulation 17/62 was, therefore, crucial.

### **Regulation 17/62**

Article 87 of the Treaty of Rome set out a timetable for the drafting of regulations to implement Articles 85 and 86. At one point it looked like agreement would be impossible but progress was suddenly made as part of a wider bargain involving the Common Agricultural Policy.<sup>45</sup> The result, Regulation 17/62, was issued in March 1962 and set out the basis on which EEC competition policy was to be implemented. Crucially, it represented the peak of German Ordo-liberal influence in pushing for a strong competition policy.<sup>46</sup> The regulation gave extensive and exclusive powers to the Commission in the operation of competition policy.<sup>47</sup> This ‘milestone’ required notification to the Commission of any agreement that impinged on Article 85(1) and the exclusive competence of the Commission to grant exemptions.<sup>48</sup> That the regulation remained in effect for forty years meant that it became a cornerstone of EEC competition policy.<sup>49</sup> Yet, while it answered some of the questions left unresolved by the wording of the provisions in the Treaty of Rome it did so ‘in a manner that has created new complications’.<sup>50</sup> Ultimately, it was still ‘a complicated, in some degree obscure, legal document’.<sup>51</sup>

Business across Europe followed these developments closely, even in countries outside the EEC, like Britain. To meet this interest, peak-level business associations began to organize workshops and conferences to discuss the impact of the regulation and there was a parallel explosion of legal explorations and interpretations of the regulation and the wider competition policy.<sup>52</sup> Likewise, companies turned to legal advice on where they stood in relation to the new competition policy.<sup>53</sup> Ultimately, British companies, like their counterparts in the member states, needed to decide whether to register their agreements,

abandon them, hide them or adjust them. Companies struggled to find solutions that clearly addressed the new legal requirements whilst meeting the needs of each company. This is well-illustrated by the case of the British company Babcock and Wilcox Ltd. (B&W Ltd.) which believed its operations were fundamentally affected by the EEC's competition policy and spent considerable time and money in trying to find a solution with which it and its sister companies were comfortable.

### **Babcock and Wilcox Ltd. and Regulation 17/62**

From the outset B&W Ltd. was aware that even on the most favourable interpretation of their agreements, the territorial element, particularly of the French agreement which dated back to 1935, clearly involved market sharing and was therefore contrary to Regulation 17/62.<sup>54</sup>

What made this obvious was that commission was paid for sales in the other Babcock companies' territories, including within the EEC.<sup>55</sup> B&W Ltd's Assistant Secretary, T.R. Brabazon, who was responsible for dealing with the company's response to Regulation 17, suggested that the commission could be regarded as a 'royalty' on a patent and to register the agreements on this basis. Accordingly, all inter-company meetings and minutes were to stop mentioning the commission and that the decision to pay such commission should be revoked, though, in practice, the payments would continue at the same rate for the use of patent and trademark rights of the local company.<sup>56</sup>

Brabazon's goal was to try to leave the existing relationships between the various European companies and B&W Ltd. unchanged but by May 1962 his strategy to achieve this had changed. Reviewing the position with the different companies he believed the existing arrangements with the Italian, Dutch, German and French companies were all problematic as they involved market sharing or restrictions based on more than trademarks and patents. Now he suggested that the goal of B&W Ltd. should be to avoid registering any of its agreements

because registration of even one agreement could 'possibly prove an acute embarrassment to Babcock companies in other Common Market countries'.<sup>57</sup> To this end he was soon suggesting that the company should adjust its existing agreements.<sup>58</sup>

The issue was how to alter them to make them compliant with Article 85 without changing their substance. This was not straightforward because of the continuing uncertainty over the precise meaning of the Articles and Regulation 17/62, as already noted. Brabazon talked to many people, read widely and sought the advice of friends to see if anyone had 'applied himself to the problem of circumventing the Treaty in circumstances similar to ours'.<sup>59</sup> Thus he sent a private and confidential letter, written from his home, to Ralph Haxby, of Solartron Electronic Group, Ltd.: 'I am wondering whether you have thought up any cunning devices for dealing with the situation. We, like other licensors, are most reluctant indeed to impair the picture of territorial exclusivity within Europe in favour of a free-for-all in which all our present associates and licensees can compete with each other.'<sup>60</sup> He ended, continuing the conspiratorial tone, by asking Haxby to destroy the letter if his company did not face the same problems.

B&W Ltd. also took legal advice, retaining the services of Pierre Lepaulle, a French lawyer. Lepaulle, who had been at Harvard in the early 1920s, is still cited today as the author of a key work on the law applicable to trusts, and advised many companies about this legal area, including EEC competition policy.<sup>61</sup> Brabazon first met Lepaulle in July 1962, presumably via Jean Louis, which, given Louis' position at the heart of the French business community and his active concern with all things related to European integration, would imply that B&W Ltd. was getting the best advice available from an expert in this field. Lepaulle agreed that the best approach was to terminate the existing agreements in order to 'wipe the slate clean', re-write them to make them comply with Article 85 while agreeing to continue to do business with each other as before.<sup>62</sup> Thereafter, Brabazon spent his time in

lengthy correspondence with Lepaulle on the form of any new agreements and advising existing licensees in Europe not to register their agreements with Babcock and Wilcox Ltd. at that stage. The new agreements omitted any mention of commission rates when territorial boundaries were crossed by one of the companies to avoid them being perceived by the Commission as hampering free trade.

In no longer prohibiting sales outside each company's territory, the danger was that reliance had to be placed on patents and trademarks to achieve the same goal and it was felt that these tools might not be strong enough.<sup>63</sup> Lepaulle set out the dilemma:

The more you go beyond what is covered by trademarks, patents and goodwill, the more you increase the risk. However, since the very future of B&W is really at stake, I am of the opinion that the risk should be taken.

In other words, the basic notion becomes that of an international goodwill which is not static but a living and growing patrimony. Even if, today, the difficulty could be camouflaged, that camouflage would not hold water for long (too many enemies are watching you!) It means perhaps a fight before the Commission, but let us face it!....

The clause forbidding trade outside the territory, if of paramount importance, may be expressly inserted. It creates ipso facto great risks to be barred by the Commission but, if the Commission takes the stand and bars only that clause, we are not in a worse situation than if we had suppressed it ourselves! The risk is that it might incite the Commission to look unfavourably to the whole set up.<sup>64</sup>

Ultimately, it was Lepaulle's model which the company followed, though, as will be shown, with some reluctance. The status quo would require notification and would be difficult to

justify.<sup>65</sup> In other words, reform of the existing agreements was essential: Lepaulle's advocated path of relying on the concept of 'goodwill' as a form of industrial property had been considered 'attractive practically by everybody to whom I [Lepaulle] have talked' and 'it will be so important for you in the future that your case must be tackled from the start from that angle'.<sup>66</sup> The idea was to rely on trademarks to maintain market divisions and to emphasise the longstanding family of Babcock firms where there was equal treatment for each company and information and innovations were shared around, whichever company made the initial discovery. Brabazon seemed convinced that change on these lines was required: the new agreements would not be as strong as the old ones but it was better to have something of this sort than maintaining more rigid agreements which would either require to be notified or ran the risk of discovery, a fine and their ending.<sup>67</sup> An important consideration here was in making the agreements take a form that did not require notification, kept them confidential and provided an opportunity to revise them in private at some later date if so desired.

Lepaulle's role was central, therefore, in the company deciding on how to revise its agreements. In part, this was because his advice was based on a relatively liberal interpretation of the meaning of the Regulation. So when B&W Ltd. received different information on the position in Brussels, this time from the legal advisors to the Water-Tube Boilermakers' Association, it did not change the company's approach.<sup>68</sup> This was despite being warned that the officials in the German Federal Cartel Office and the Commission were similar in their outlook ('dedicated idealists'), and that, 'For the time being at any rate, the German influence will tend to prevail in Brussels and I see no prospect of any relaxation of the prevailing rules of competition, rather the reverse'.<sup>69</sup>



Yet in other respects he had a clearly different starting point from the companies. As a lawyer he took a position closer to the lawyers of the DG IV, than to the company, in wanting to create case law:

My conclusion is that the future attitude of the Commission is in no way set, that the personnel has no clear idea as to what the reactions of the enterprises and the pressures of the governments are going to be. As to their economic doctrine, they are afraid to work in the abstract and prefer to use the trial and error method.

Under the circumstances, I am more convinced than ever that, if the enterprises themselves have a determined and clear cut attitude, if that attitude is reasonable, they must hold firm their positions and, eventually, in case of disagreement with the Commission bring the matter before the Court.

Actually such are the wishes of the staff of the Commission which wants to have legal landmarks of its activities established as quickly as possible by the Court.

It is therefore extremely difficult in answering to a question to distinguish between the prediction of the solutions given by the Commission and what we must fight for with a reasonable chance of success before the Court.<sup>70</sup>

He repeated this call to arms in November: ‘Who is going to be the one? There will, of course, be a great temptation for those who can reach a de facto satisfactory result by using 85-3, not to take the risks and incur the expenses of the fight. However, the easy way in 1963 may turn to be the hard way in 1967 or after!’<sup>71</sup>

However, such a strategy was seen as too risky by B&W Ltd. which wished to keep its profile as low as possible in this respect. Unlike Brabazon, the directors were still not convinced by Lepaulle’s model. In September B&W Ltd decided to hold off signing the new

agreements: there were still fears that removing the territorial divisions might encourage the German associate, DB&W, to trade more widely. B&W Ltd. still wanted to maintain the status quo if at all possible because of the longstanding nature of some of the agreements and that any change might alter fundamentally the nature of the relationships between the companies, as had happened in the German case on various previous occasions. Lepaulle's proposals were only to be accepted at the last possible moment if no alternative emerged.<sup>72</sup> In other words, Lepaulle's new agreements were still regarded by the board as a second-best solution at this stage because of the perceived dangers in altering the existing status quo.

This reluctance to end the existing agreements was boosted by a further development towards the end of 1962. It was widely reported in Britain and elsewhere that the deadline of 1<sup>st</sup> February 1963 for the notification to the Commission of two-party agreements was to be extended, probably to the end of the year.<sup>73</sup> This encouraged B&W Ltd. in its 'wait and see' policy: it did not want to re-negotiate the existing agreements unless it had to and was trying to leave things for as long as possible to get as much information to inform any decision and just in case some way could be found of maintaining the existing set of relationships between the companies. This was still an important consideration for B&W Ltd. only a month before the notification deadline:

The problem facing us is that the Rules of Competition are insufficiently clear to enable us to decide with certainty whether, and if so how and when, we must alter the wording of our present Agreements with Associates and Licensees, although all the indications are that some alteration will have to be made eventually.

Because our relationship with Associates and Licensees, except in Italy, are of more than half a century's standing, we are naturally reluctant to make any precipitate change unless we can see clearly the minimum extent necessary.<sup>74</sup>

As a result, negotiations on any new agreements had not progressed, but it now became clear that the notification date would not be postponed after all and, even if re-negotiations started immediately, it was unlikely that they would be concluded by the deadline.<sup>75</sup> Thus, while the company was clearly reluctant to make changes to the existing agreements, the Commission was not blameless in explaining Babcock's failure to amend its agreements before the deadline, even if the company had no intention of notifying either the old or new agreements.

Lepaulle continued to promote the need for the new agreements to be in place as soon as possible even if there was no intention to notify the Commission.<sup>76</sup> The greatest risk, Lepaulle emphasized, was in deferring the changes (just as B&W Ltd was doing) since it was critical to suggest that the old agreements had ended in early 1962 to deter the Commission from asking to see the old agreements with all the attendant dangers. At the latest, the changes had to be in place by 1<sup>st</sup> April. This seems to have finally convinced B&W Ltd. of the need for action and negotiations began on the new agreements, but in each case it was made clear that 'it was B&W Ltd. policy to try to maintain the existing territorial subdivisions within Europe' and that the 'real intention' was to maintain the existing relationships.<sup>77</sup>

However, at this point the problematic relations with DB&W reappeared. The German associate company refused to sign the new agreement because, in their eyes, the agreement still violated Article 85, 'a very narrow and literal' approach in the eyes of the British.<sup>78</sup> B&W Ltd. was unwilling to cancel the old agreement with DB&W until a new one was accepted and began to put pressure on the German company, especially as all the other European associates agreed to the proposed new agreements whilst maintaining the status quo in practice. A British contingent visited DB&W, followed by a meeting between Lepaulle and the German company, with Brabazon visiting Lepaulle in Paris to prepare for the meeting

with the Germans. At the preparatory meeting Lepaulle emphasised the importance of not diluting the concept of common patrimony of patents and know-how.<sup>79</sup> He also rejected the suggestion of B&W Ltd. buying majority shareholdings in the associated companies to develop a parent-subsidary relationship as an irrelevance.

The meeting between Lepaulle and DB&W had some success but failed to bring about agreement. The German company representatives were persuaded of the sense of the new form of agreements: 'They would naturally like an agreement which was 100% safe, but they perceived that the consequence of this would be a complete breakdown of the Babcock organization in Europe.'<sup>80</sup> However, the terms of the new agreement remained undecided.<sup>81</sup> By November 1963 there was still no agreement, and Brabazon's frustration was clear: 'German reluctance is endangering not only the German company but also the others'.<sup>82</sup>

Nevertheless, the issues had become clearer. At the Managing Director's meeting in June the chairman of DB&W, Dr Jantscha, set out two objections which needed resolution before the company would sign the new agreement.<sup>83</sup> First, there had to be a clear definition of what 'Babcock products' were – in other words what items were included in the agreements (and what were not covered) and, secondly, commission rates needed to be adjusted in markets where B&W Ltd. did not really have any presence. The latter was seen as no problem while the first was discussed and a draft list drawn up.<sup>84</sup> It was hoped that making this division would allow quicker agreement by ensuring that the technical agreements focused on these core products. In November a consensus was reached that the technical interchange agreements could proceed and these were finally signed over the following weeks but not notified to the Commission.<sup>85</sup> In January 1964 there was broad agreement on the division between 'Babcock products' and 'Non-Babcock products', though this was then refined with the addition of the 'Babcock field' and the 'Non-Babcock field'.<sup>86</sup> From this emerged a code of conduct signed by the British, French and German companies in June

1964. The code provided a list of ‘Babcock products’ under the general definition of any ‘product evolved by the skill of the Babcock design and manufacturing teams working separately or together on products that require a fundamental knowledge of heat transfer, combustion and pressure parts, also mechanical engineering associated with such products’.<sup>87</sup> The ‘Babcock field’ applied where ‘a Babcock product is used in or associated with steam raising plant, hot water boiler plant and nuclear energy installations’. The code continued by emphasizing the long-term territoriality of the three companies’ operations and that ‘the normal rule is that the Company responsible for the territory is entitled to exploit Babcock Products in the territories in which it owns the goodwill, trademarks and patents, without competition from other Babcock companies’. On those occasions when another Babcock company was better placed to make a sale in another’s territory it simply said ‘The procedure for dealing with these occasions are well established’ and then outlined the basic principles of consultation between the Babcock companies involved, underpinned by the idea that any proposal should proceed if it was in ‘the overall interests of the European Group of Babcock Companies’.

With the code of conduct and the technical interchange agreements in place the Babcock European companies seem to have come to the end of their immediate reaction to Regulation 17 and its impact on their activities. Jean Louis continued to report to his fellow managing directors on developments in the EEC, including competition policy.<sup>88</sup> In 1969 there was talk of revising the list of ‘Babcock Products’.<sup>89</sup> And technical information agreements were still being signed in the 1970s.<sup>90</sup> In other words, the challenge of EEC competition policy had been faced, dealt with as B&W Ltd and its associates felt best - by maintaining the principles of the old agreements but changing the formal agreements now supported by informal norms - and their attention then moved to facing other challenges.

## Conclusion

The response of Babcock and Wilcox Ltd. to Regulation 17/62 makes an interesting case study of the issues raised by the emergence of the EEC's competition policy for individual companies. This allows us to draw conclusions about how EEC competition policy was perceived and how this company and its European associates responded. In particular, it provides clear insights of a cartel biography from within at a time when the companies involved were faced with a new and radical challenge. They were confronted with a major perceived shift in antitrust enforcement and had to develop what they thought was the most appropriate response. Beginning with these perceptions of EEC competition policy, it is evident that companies like the Babcock family viewed Article 85 and Regulation 17/62 as a radical departure from what existed: 'a troublesome matter' that, potentially, would fundamentally alter the way the companies interacted with each other.<sup>91</sup> Deciding on the appropriate response was always going to be difficult, therefore,, so B&W Ltd. preferred a policy of 'wait-and-see'.<sup>92</sup> The longer the company could hold off making a decision, the more information would be available and the less the risk that a damaging and unnecessary decision would be taken. In addition, there were complaints that the Commission's statements and subsequent regulations enhanced the degree of uncertainty requiring the business community to make assumptions about what the legislation meant for them.<sup>93</sup>

The 'wait-and-see' policy was further encouraged because of the reports across Europe that the Commission would delay the deadline for bilateral agreements from 1<sup>st</sup> February 1963 to the end of the year.. As the General Secretary of Fabrimetal, the Belgian engineering trade association, told his members: 'We can only regret the incoherence of these successive improvisations and the uncertainty that they are provoking in industrial circles'.<sup>94</sup> Such 'vacillation' meant that the time was too short for B&W Ltd. and its associates to concur on the revised agreements by the deadline.<sup>95</sup> As such, a company's decision on

whether to notify the Commission of its agreements was not a straightforward yes or no. Many companies had not decided on their response when the deadline passed given the importance of the decision and the radical nature of the changes required. To some extent, therefore, some agreements were still in place after the February deadline by default rather than by design and it would not seem to have been the case, as some have argued, that the incentives to notify at the outset were overwhelming.<sup>96</sup>

This leads into the response of business to this new environment. It did represent a cultural sea-change for business who continued to believe that business cooperation, including cartel-like activity was in the interests of the firm and of the wider economy. As one commentator put it at the time, ‘Psychologically, there can be no doubt that a great many of European businessmen within the EEC will have to revise their attitudes. This will take time.’<sup>97</sup> Certainly, this was a crucial factor in B&W Ltd.’s decision not to notify. The existing agreements were regarded as having been successful and the company did not want to give them up. The European Babcock companies wished ‘to avoid undue competition between the respective Babcock companies’ while dealing with increased competition from the US B&W Co. and other European boiler makers as tariffs fell.<sup>98</sup> However, this was not the only factor: uncertainty about the implications of the policy was also an influence.

Nevertheless, Babcock’s agreements were changed and in a way that was believed to weaken them, even if this was done reluctantly and with the underlying objective of maintaining the existing market sharing arrangements. This is relevant to the general literature on cartels in a number of respects. First, it illustrates how the perception of a tightening of the regulatory framework pushed the Babcock family of firms to amend the agreements even though they were determined not to notify them. The perceived risk of discovery of the old agreements was judged to be too great, not just in terms of any fine but also because of the risk to the public reputation of the companies and that confidential

commercial information would be made available to their competitors. The strategy was driven by attempting to balance the tension between minimising change in behaviour and minimising the risk of damage to the companies if discovered. Secondly, the case supports Levenstein and Suslow's argument about cheating being a way of life within cartels rather than a cause of death.<sup>99</sup> Thus, there was distrust of DB&W and it proved difficult to negotiate acceptance of the new agreement with DB&W, but it was achieved. Moreover, the perceived cheating by B&W Co., the US sister company, actually drew the European Babcock companies together in viewing B&W Co. both as a common close relation and as a common foe.

Thirdly, the case highlights the role of legal advice in influencing company responses to changes in competition policy. In many respects, compared with most other British companies and even many EEC companies, B&W Ltd. was admirably placed to know about developments in the EEC, including competition policy. It was active and attentive in Federation of British Industries circles and had other mechanisms for information gathering. It had associate companies across Western Europe, including in Belgium, which also filtered back information to it. Few European companies would have had so many potential sources of information. Yet, ultimately, its response was driven by Pierre Lepaulle's advice. It was his suggestion of the idea of common patrimony as a defence of their relationships that eventually proved persuasive and was followed by B&W Ltd. in its new agreements. In this respect, Lepaulle was indeed acting as a formative influence on corporate responses to EEC competition policy: he, like other legal experts and business lawyers, was far more than simply a conduit of information between the Commission and companies.

Moreover, this advice was, in Lepaulle's own words, 'as much an advice on policy and appraisal on risks as a strict opinion of law'.<sup>100</sup> Given the uncertainty that surrounded the legislation and Regulation 17/1962 legal advice varied widely. German legal advice given to



DB&W and to the legal advisers to the Water-Tube Boilermakers' Association suggested a rigid interpretation of Article 85(1). Thus, taking Lepaulle's advice rather than that emanating from Germany clearly affected how B&W Ltd. responded to the new competition policy. Individuals and their particular advice mattered in determining the response of companies to Regulation 17. The uncertainty over its interpretation provided that opportunity. In addition, the case shows that German legal advice was not necessarily the obvious source of guidance on EEC competition policy that it is often presented to have been.

There was also a more long-term impact on the Babcock family of companies in following Lepaulle's advice. The notion of 'common patrimony' had implications for the future development of the relationships between the companies: it was important to maintain a sense of equality. It was partly for this reason that the activities of Babcock and Wilcox Technische Maatschappij N.V. were wound down as they did not fit with the notion of common patrimony. Likewise, this created issues for DB&W which believed it had contributed more to the family of companies than some of the other associates and so wanted to be given more preferential treatment. Again, although there was a desire to be conciliatory to the Germans, to distinguish between the associate companies and the licensees would be detrimental to any argument of common patrimony and therefore could not be allowed.<sup>101</sup> It was for this reason that the Germans demanded the drafting of the list of Babcock products as this would allow them freedom to sell non-Babcock products more widely as they were not covered by the agreements.

Even though the Babcock family of companies aimed to maintain the status quo as far as possible, the introduction of Regulation 17/1962 did impact upon the companies. It would be easy to conclude that Article 85 and Regulation 17 had no substantive impact on the relations between the European Babcock companies: the underlying philosophy of market sharing remained. However, this is unsurprising given the radical nature of the changes

envisaged by the policy if implemented rigorously. More substantively, the companies took the challenge of the new policy very seriously. They would not have spent as much time and money as they did on the issue if they did not regard it as a potentially major threat to the way the companies interacted. Furthermore, the new agreements did weaken the formal market-sharing arrangements. As such, the new agreements did not form such an obstacle as the old agreements to the possibility of greater competition among the Babcock companies at some point in the future.

More generally, the case also illuminates the effect of competition policy upon business. First, unsurprisingly, it confirms Warlouzet and Wistchke's contention that a cultural sea-change in business attitudes did not happen overnight when faced with the radical shift in competition policy. No doubt this is the case when business faces radical changes to its regulatory framework. Second, and following from this, it reminds us that the effectiveness of competition policy is dependent not on the policy itself but the response of business to it. In this case although the new policy did not provide sufficient deterrent for the Babcock family to end their agreements, they were weakened. And, finally, the nature of the relationship between the firms and hence the structure of the 'Babcock family' was affected by the new competition policy regime. However, this was a result of Lepaulle's idea of common patrimony and the need for apparent equality between the various Babcock companies. This ended the future of the new Dutch company which had been created partly with thoughts about European integration and the creation of a single European Babcock company in mind. The prospect of a potential Eurochampion, so much the aim of EEC industrial policy in the late 1960s, was, therefore, diminished. Thus the effect of competition policy can have consequences beyond simply creating a better functioning market.

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<sup>1</sup> McGowan and Wilks, 'First Supranational Policy'.

<sup>2</sup> Warlouzet, *Choix*, 271-3 and 292-4.

<sup>3</sup> Pace and Seidel, 'Drafting', 54.

<sup>4</sup> Regulation 17/1962 because it was the seventeenth regulation issued by the Commission in 1962.

<sup>5</sup> Warlouzet, 'Centralization', 730.

<sup>6</sup> On this debate see McLachlan and Swann, *Competition Policy*, 13; Temple Lang, *Common Market*, 469; and Linssen, 'Application', 31-3.

<sup>7</sup> Warlouzet and Witschke, 'Difficult Path', 448.

<sup>8</sup> On the negotiation of Regulation 17/62, see Gerber, *Law and Competition*; Hambloch, *Europäische*; Hambloch, 'EEC Competition Policy'; Montalban, Ramírez Pérez and Smith, 'Competition'; Pace and Seidel, 'Drafting'; Pitzer, *Interessen*; Seidel, 'DG IV'; Warlouzet, *Choix*.

<sup>9</sup> For exceptions see Ramírez Pérez, 'Role'; Bühner and Warlouzet, 'Regulating Markets'; and Rollings, *British Business*, 193-217.

<sup>10</sup> Corson, 'Impact', 427. He was talking generally not specifically about European competition policy.

<sup>11</sup> George and Joll, 'Legal Framework', 17. A more recent figure of the level of discovery is 10-30 per cent in Utton, *Cartels*, 44.

<sup>12</sup> See Harding and Edwards, *Cartel Criminality*.

<sup>13</sup> Levenstein and Suslow, 'Studies'; idem, 'What Determines?'; idem, 'Breaking Up'; and, 'Cartels and Collusion'.

<sup>14</sup> Bruland, 'Babcock and Wilcox Company', 222-23.

<sup>15</sup> Ibid., 237-9 and Boyce, *Co-operative Structures*, 116-17.

<sup>16</sup> Boyce, *Co-operative Structures*, 113-40.

<sup>17</sup> University of Glasgow Archives Services (hereafter GUAS) UGD309/1/5/35A, Brabazon to Worlledge, 4 May 1962.

<sup>18</sup> GUAS UGD 309/1/1/9, board meeting minutes, 27 May 1947.

<sup>19</sup> GUAS UGD 309/1/1/12, board meeting minutes, 8 November 1955.

<sup>20</sup> GUAS UGD 309/1/1/13, board meeting minutes, 14 May 1957 and 10 June 1958.



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- <sup>21</sup> GUAS UGD 309/1/1/14, board meeting minutes, 14 April 1959.
- <sup>22</sup> Boyce, *Co-operative Structures*, 126; and GUAS UGD309/1/5/35A, T.R. Brabazon to A. Reisner, 'Treaty of Rome, German B&W Co.', 27 April 1962.
- <sup>23</sup> GUAS UGD 309/186/24/3, 'The Role of the Babcock and Wilcox Technische Maatschappij N.V.', undated but November 1963.
- <sup>24</sup> GUAS UGD 309/186/24/3, 'The Role of the Babcock and Wilcox Technische Maatschappij N.V.', undated but November 1963.
- <sup>25</sup> See GUAS UGD 309/1/18/33 onwards.
- <sup>26</sup> GUAS UGD 309/186/24/3, T.R. Brabazon, 'Patents in relation to Babcock and Wilcox Technische Maatschappij N.V.', 30 July 1963; and GUAS UGD 309/1/18/40 vol. II, H.L. Ewaldsen (DB&W), 'Managing Directors' Meeting at Baden-Baden on 26<sup>th</sup>/27<sup>th</sup> April 1967', 4.
- <sup>27</sup> GUAS UGD 309/1/18/33, 'Managing Directors' Meeting: Notes of a Meeting held at Annecy, France, June 22<sup>nd</sup> and 23<sup>rd</sup>, 1960', 8. The six EEC companies were the French and German Associates, Babcock-Smulders in Belgium and three licensees of B&W Ltd. – Stork (in the Netherlands), Breda and Ansaldo (both in Italy). See also GUAS UGD 309/1/18/34, 'The Position of the B&W Companies in the Common Market and Analysis of their Products (including licensees) and their Marketing', presented at the Managing Directors' meeting, June 1962.
- <sup>28</sup> GUAS UGD 309/186/24/1, T.R. Brabazon, Assistant Secretary, B&W Ltd. to the Foreign Department, Barclays Bank Ltd., 'Babcock Europe Technische Maatschappij N.V.', 3 May 1962.
- <sup>29</sup> For example GUAS UGD 309/1/18/40 vol. II, H.L. Ewaldsen (DB&W), 'Managing Directors' Meeting at Baden-Baden on 26<sup>th</sup>/27<sup>th</sup> April 1967'.
- <sup>30</sup> Morival, 'Europe du Patronat'; and Warloutzet, 'Influencer'. See also, Warloutzet, *Choix*.
- <sup>31</sup> UK National Archives (hereafter TNA) FO 371/134508/M611/748, R.S. Isaacson to D.F. Hubback (Treasury), 20 September 1958.
- <sup>32</sup> van Themaat, 'Rules of Competition'; Coppé, 'Economic and Political Problems'; and European Commission, *General Report* (July 1962), quoted in Allen, *Monopoly*, 147.
- <sup>33</sup> UK Council of the European Movement, *European Industrial Conference*, 73-7.
- <sup>34</sup> Schumacher, 'Procedure', 367.
- <sup>35</sup> Honig et al. *Cartel Law*, 1.

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- <sup>36</sup> Honig et al., *Cartel Law*, 3. See also Goyder, *EEC Competition Policy*, 27; Graupner, *Rules*, 3; Campbell and Thompson, *Common Market Law*, 101; Thiesing, 'Rules', 122-3, and Balekjian, *Legal Aspects*, 236.
- <sup>37</sup> McLachlan and Swann, *Competition Policy*, 129.
- <sup>38</sup> Temple Lang, *Common Market*.
- <sup>39</sup> McLachlan and Swann, *Competition Policy*, 131. For contemporary examples see Minoli, 'Industry's Views', and Thiesing, 'Rules', 125.
- <sup>40</sup> Steindorff, 'Provisions', 196.
- <sup>41</sup> For contemporary examples see 'EEC Cartel Policy', 45; and Pujade, 'Harmonisation' 88. For an historical review see Pace and Seidel, 'Drafting'.
- <sup>42</sup> McLachlan and Swann, *Competition Policy*, 452-3; Griffith Johnson in *Antitrust Developments*, 9.
- <sup>43</sup> Goyder, *EEC competition policy*, 28-9; and Linssen, 'Application', 31-2.
- <sup>44</sup> Becker, 'Vertical Agreements', 89.
- <sup>45</sup> Warlouzet, 'Centralization' and Hambloch, 'EEC Competition Policy'.
- <sup>46</sup> Pace and Seidel, 'Drafting', 55. See also Ramírez Pérez and van de Scheur, 'Evolution'.
- <sup>47</sup> Warlouzet, 'Centralization'.
- <sup>48</sup> McGowan, *Antitrust*, 110; Schweitzer and Patel, 'EU Competition Law', 213.
- <sup>49</sup> Pace and Seidel, 'Drafting'; Warlouzet, 'Centralization'; and Buch-Hansen and Wigger, *Politics*, 55.
- <sup>50</sup> Graupner, *Rules of Competition*, 24.
- <sup>51</sup> Snijders, 'Application', 191; and McLachlan and Swann, *Competition policy*, 137.
- <sup>52</sup> London Chamber of Commerce, *Annual Report for 1962*, 9; FBI, *Rome Treaty*; FBI, *Restrictive Practices*; PEP, *Cartel Policy*. On meeting attendance see, 'Registration of Agreements', 137; and GUAS UGD309/1/5/35A, T.J. Wells (FBI) to J.H. Worlledge, 30 July 1962.
- <sup>53</sup> For example, Honig et al. *Cartel Law*; Lewis and Kemp, *Registration; Comparative Aspects*; and *Restrictive Practices*.
- <sup>54</sup> GUAS UGD 309/1/5/35A, Brabazon to Worlledge, 4 May 1962.
- <sup>55</sup> GUAS UGD 309/1/5/35A, Brabazon to A Reisner, 'Treaty of Rome, German Babcock and Wilcox company', 27 April 1962.
- <sup>56</sup> GUAS UGD 309/1/5/35A, Brabazon to A Reisner, 'Treaty of Rome, German Babcock and Wilcox company', 27 April 1962.
- <sup>57</sup> GUAS UGD 309/1/5/35A, Brabazon to Worlledge, 4 May 1962.

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- <sup>58</sup> GUAS UGD 309/1/5/35A, Brabazon, 'Treaty of Rome – restrictive practices', 6 July 1962.
- <sup>59</sup> GUAS UGD 309/1/5/35A, Brabazon to Haxby, 5 September 1962.
- <sup>60</sup> GUAS UGD 309/1/5/35A, Brabazon to Haxby, 5 September 1962.
- <sup>61</sup> Pierre Lepaulle, <http://www.ourstory.info/3/FF/c/Lepaulle.html> [accessed 25 March 2014]. The key text is Lepaulle, *Traite Theorique* which was still being cited in the 1985 Hague Convention on the Law Applicable to Trusts and on their Recognition. He may also have helped Jews in France during the Second World War, see Weisberg, *Vichy Law*, 329-30.
- <sup>62</sup> GUAS UGD 309/1/5/35A, Brabazon, 'Treaty of Rome – restrictive practices', 6 July 1962.
- <sup>63</sup> GUAS UGD 309/1/5/35A, Brabazon to P.H. Dunn, B&W Ltd., explaining the new draft agreement with the Dutch associate, 18 September 1962.
- <sup>64</sup> GUAS UGD 309/1/5/35A, Lepaulle to Brabazon, 1 October 1962.
- <sup>65</sup> GUAS UGD 309/1/5/35A, Lepaulle to Brabazon, 30 October 1962.
- <sup>66</sup> GUAS UGD 309/1/5/35A, Lepaulle to Brabazon, 30 October 1962.
- <sup>67</sup> GUAS UGD 309/1/5/35A, Brabazon to Worlledge, 6 November 1962.
- <sup>68</sup> GUAS UGD 309/1/5/35A, KJ McKillop 19 December 1962 covering letter from Green, 14 December 1962.
- <sup>69</sup> GUAS UGD 309/1/5/35A, KJ McKillop 19 December 1962 covering letter from Green, 14 December 1962
- <sup>70</sup> GUAS UGD 309/1/5/35A, Lepaulle to Brabazon, 30 October 1962. On the role of lawyers in the development of EEC policy see Vauchez, 'Making'; and idem, *Brokering Europe*.
- <sup>71</sup> GUAS UGD 309/1/5/35A, Lepaulle to Brabazon, 27 November 1962.
- <sup>72</sup> GUAS UGD 309/1/5/35A, Brabazon to Worlledge, 13 September 1962.
- <sup>73</sup> GUAS UGD 309/1/5/35A, K.J. McKillop to WTBA members, 7 December 1962; Rollings, *British Business*, p. 213.
- <sup>74</sup> GUAS UGD 309/1/5/35A, Brabazon to Worlledge, 'Treaty of Rome – Rules and Competition', 4 January 1963.
- <sup>75</sup> GUAS UGD 309/1/5/35A, Worlledge to Brabazon, 11 January 1963.
- <sup>76</sup> GUAS UGD 309/1/5/35A, Brabazon to Worlledge, 18 January 1963, reporting on his visit to Paris.
- <sup>77</sup> GUAS UGD 309/1/5/35A, Brabazon, 'Diary note', 24 January 1963 and Brabazon to Marine Department (B&W Ltd), 24 January 1963.
- <sup>78</sup> GUAS UGD 309/1/5/35A, undated and unsigned note (probably by Brabazon), written around 25 January 1963.

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- <sup>79</sup> GUAS UGD 309/1/5/35A, 'Diary note', 13 February 1963.
- <sup>80</sup> GUAS UGD 309/1/5/35A, Report from Brabazon to Worlledge on visit to Oberhausen, 27 February 1963.
- <sup>81</sup> GUAS UGD 309/1/5/35A, Brabazon to Lepaulle, 4 April 1963.
- <sup>82</sup> GUAS UGD 309/1/5/35A, Brabazon to Worlledge, 30 October 1963.
- <sup>83</sup> GUAS UGD 1/18/35, 'Report of Managing Directors' Meeting, Vienna June 1963', 6-7.
- <sup>84</sup> GUAS UGD 1/18/35, 'Report of Managing Directors' Meeting, Vienna June 1963', 7-10. The draft list is at Appendix 6.
- <sup>85</sup> GUAS UGD 309/1/5/35A, Worlledge to McNeil, 'Treaty of Rome', 5 November 1963 and Intercompany meeting, 18 November 1963 and following correspondence.
- <sup>86</sup> GUAS UGD 309/186/24/1, 'Note of a meeting held in Babcock House on the 29<sup>th</sup> January 1964'.
- <sup>87</sup> GUAS UGD 309/1/18/4, 'British, French and German Companies: Code of Conduct', 10 June 1964.
- <sup>88</sup> For example, GUAS UGD 309/1/18/39, 'Report of Managing Directors' Meeting at Baden Baden, Germany April, 1967', 1.
- <sup>89</sup> GUAS UGD 309/1/18/4, 'Babcock Products', E.J. Hulland to P.H. Dunn, 27 February 1969.
- <sup>90</sup> Boyce, *Co-operative Structures*, pp, 126-8.
- <sup>91</sup> GUAS UGD 309/1/5/35A, Brabazon to A.A. Webb (Managing Director, Babcock-Smulders), 19 September 1962.
- <sup>92</sup> GUAS UGD 309/1/5/35A, Brabazon to Webb, 4 January 1963. See also UGD 309/1/5/35A, Brabazon to Worlledge, 18 January 1963 on Lepaulle reporting that many French companies were also following this policy; and more generally, McLachlan and Swann, *Competition Policy*, 148.
- <sup>93</sup> GUAS UGD 309/1/5/35A, 'The Treaty of Rome: Rules of Competition', unsigned by probably Brabazon, 18 January 1963.
- <sup>94</sup> GUAS UGD 309/1/5/35A, C. Del Marmol, 'Common Market Notification', 4 January 1963, translated by Babcock- Smulders and sent by Webb to Brabazon, undated but January 1963.
- <sup>95</sup> GUAS UGD 309/1/5/35A, Brabazon to Webb, 25 January 1963.
- <sup>96</sup> Utton, *Cartels*, 91; and Pace and Seidel, 'Drafting', 85-6.
- <sup>97</sup> Junkerstorff, 'Competitive Rules', 389.
- <sup>98</sup> GUAS UGD 309/1/1, board meeting, 12 July 1960; and UGD 309/1/18/33, H. Seidl to McNeil, notes by McNeil, 4 August 1960.
- <sup>99</sup> Levenstein and Suslow, 'Breaking Up', 470.

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<sup>100</sup> GUAS UGD 309/1/5/35A, Lepaulle to Brabazon, 30 October 1962.

<sup>101</sup> GUAS UGD 309/1/5/35A, Brabazon to Worlledge, 'Treaty of Rome – Oberhausen, Visit on 26.2.1963'.